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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 BILLY CEPERO,

10 Petitioner,

11 vs.

12 BRIAN WILLIAM, et al.,

13 Respondents.
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Case No. 2:14-cv-01397-JAD-PAL

ORDER

15 The court directed petitioner to file an amended petition for a writ of habeas corpus because
16 in his original petition he presented only bare legal claims without any allegations of fact. Instead
17 of filing an amended petition, petitioner has submitted a motion to stay the proceedings. Petitioner
18 argues that this is a protective petition that he filed because the timeliness of his current state habeas
19 corpus proceedings is in question, which in turn could affect the timeliness of his federal habeas
20 corpus petition. That uncertainty can be good cause for the court to stay a petition. See Pace v.
21 DiGuglielmo, 544 U.S. 408, 416-17 (2005). Pace assumes that there is something to stay, but
22 petitioner has alleged nothing in his original petition. If the court were to stay the action, petitioner
23 still would need to file an amended petition to correct that defect. The date of filing of the amended
24 petition could relate back to the date of filing of the original petition “[s]o long as the original and
25 amended petitions state claims that are tied to a common core of operative facts” Mayle v.
26 Felix, 545 U.S. 644, 664 (2005). In petitioner’s case, there cannot be a common core of operative
27 facts because petitioner has not alleged any facts in the original petition. The amended petition will
28 need to stand on its own for the purposes of timeliness. If the court granted a stay to petitioner

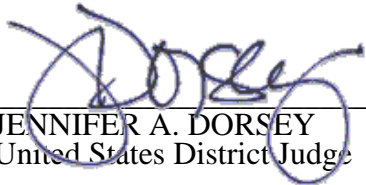
1 under these circumstances and then required him to file an amended petition after lifting the stay, it
2 is possible that the amended petition then would be untimely.¹ The court will not lay such a trap for
3 petitioner. Instead, the court will grant petitioner one more opportunity to file an amended petition
4 that corrects the defects noted in the court's earlier order. The court repeats, because it is important,
5 that the effective date of commencement for the one-year period of limitation of 28 U.S.C.
6 § 2244(d)(1) is the date that petitioner mails the amended petition to the court. Petitioner should
7 not construe any time to file the amended petition as an extension of the one-year period of
8 § 2244(d)(1).

9 IT IS THEREFORE ORDERED that petitioner's motion to stay proceedings (#8) is
10 **DENIED.**

11 IT IS FURTHER ORDERED that petitioner shall have until January 15, 2015, to file an
12 amended petition in accordance with the court's earlier order (#5).

13 DATED: December 16, 2014.

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JENNIFER A. DORSEY
United States District Judge

¹The court makes no comment on whether this action is untimely regardless of how the state courts rule on the timeliness of his state petition.